

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

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| In re Application of |) | Appeal No. 02-0045 |
| |) | |
| MATT SHADLE, |) | ORDER DENYING REQUEST FOR |
| Appellant |) | RECONSIDERATION AND SETTING |
| |) | NEW EFFECTIVE DATE OF DECISION |
| |) | |
| |) | August 12, 2004 |
| _____ |) | |

On August 2, 2004, Appellant filed a timely motion for reconsideration of the Decision in this case. In the Decision we found that none of Mr. Shadle's bare boat charter agreements for the F/V INFIDEL (that were in effect during years 1991, 1992, 1993, and 1994) expressly mention the transfer of the vessel's fishing history to him. As a result, we concluded that Mr. Shadle does not qualify for an LLP groundfish license based on the express terms of a written contract that clearly and unambiguously transferred the fishing history of the F/V INFIDEL to him.

The standard for granting a motion for reconsideration is whether the Appellant has raised material matters of facts or law that were overlooked or misunderstood by the Appeals Officer in the Decision.

In his motion for reconsideration, Mr. Shadle argues that he qualifies for an LLP groundfish license, based on the bare boat charter agreements because (1) he was the only person who fished the F/V INFIDEL during the years of the charters between 1991 and 1994; (2) the specific language of the charter agreements provided that the owner "relinquishes" and he "assumes . . . all . . . benefit of the vessel;" (3) the charter agreements do not mention that the vessel owner retains the fishing history of the vessel; and (4) the LLP was unknown and not in effect when the language for the bare boat charters was written in 1991.

Even if all of those claims are true, they do not provide a basis for granting relief to Mr. Shadle in this appeal. Even if Mr. Shadle is the only person who fished the F/V INFIDEL during the terms of the bare boat charters, and even if in maritime law, as the charterer, he would stand in the shoes of the vessel owner for other purposes, under the LLP program credit for a vessel's harvests goes to the owner of the vessel's fishing history. That is presumed to be the person who owned the vessel on June 17, 1995, absent *express* language in a written contract that clearly and unambiguously transferred that right to someone else.¹

Despite any language in Mr. Shadle's bare boat charters to the effect that the vessel owner "relinquishes . . . all . . . benefit of the vessel," the issuance of LLP licenses by NMFS is

¹50 C.F.R § 679.2., definition of "eligible applicant" for an LLP groundfish license.

governed by federal regulation, not by the contrary terms of private contracts. The LLP regulations do not provide for a bare boat charterer to be an eligible applicant for an LLP license by virtue of being a charterer or lessee. The charter, or any other written contract, would have to clearly and unambiguously provide for the transfer of the vessel's entire fishing history. The language "relinquishes . . . all . . . benefit of the vessel" did not, in our judgment, clearly and unambiguously transfer the vessel's fishing history to Mr. Shadle.

The fact that the charters in this case do not specifically provide that the vessel owner retained the fishing history of the vessel does not support Mr. Shadle's claim. The LLP regulations do not require the vessel owner to have included such a provision in the bare boat charters in order to retain ownership of the vessel's fishing history. The only time a vessel owner would have needed to include such a provision would be in a contract for the sale of the vessel, on or before June 17, 1995. Under the LLP regulations, where a contract is silent or unclear or ambiguous with respect to the transfer or retention of the fishing history, the vessel owner on June 17, 1995, is presumed to own the fishing history.²

Mr. Shadle argues that the LLP qualifying fishing history of the F/V INFIDEL could not have been transferred in 1991 because no qualifying history existed at that time. This argument, if correct, would actually support our conclusion that the vessel's fishing history was not transferred to Mr. Shadle. It is conceivable that the parties to the bare boat charters in question could have provided for the transfer of the past and future fishing history of the vessel, and any

²The commentary to the Final LLP rule states:

The following presumptions will be used to determine the qualification for a license in the absence of a written contract provision addressing the vessel's fishing history. First, if a vessel was sold on or before June 17, 1995, it will be presumed that the vessel's fishing history and license qualification were transferred with the vessel. Second, if a vessel was sold after June 17, 1995, it will be presumed that the vessel's fishing history and license qualification remained with the seller. Furthermore, only one license will be issued based on the fishing history of any qualified vessel.

Final Rule, 63 Fed. Reg. 52,642, 52,647 (1998). The Fishery Management Plan for Groundfish in the Gulf of Alaska states:

License Recipients. Licenses will be issued to owners (as of June 17, 1995) of qualified vessels. The owners as of this date must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. In cases where the vessel was sold on or before June 17, 1995, and the disposition of the vessel's fishing history for license qualification was not mentioned in the contract, the license qualification history would go with the vessel. If the transfer occurred after June 17, 1995, the license qualification history would stay with the seller of the vessel unless the contract specified otherwise.

FMP for Groundfish of the Gulf of Alaska, Section 4.4.1.3.1 (March 1, 2002), available on the Council website <<<http://www.fakr.noaa.gov/npfmc/fmp/goa/goa.htm>>>

fishing rights or privileges that might derive from ownership of that history. As long as the fishing rights or privileges were described with sufficient clarity and particularity, the charters would not have had to mention the LLP program or LLP licenses by name. Nonetheless, these charters didn't do that. We read these charters as transferring to Mr. Shadle only the legal authority to possess and operate the vessel during the terms of the charters. We do not read the charters as severing the ownership of the vessel's fishing history from the ownership of the vessel.

The results of this appeal might have been different if the LLP regulations provided that charterers or lessees of the vessel could be eligible applicants for an LLP license in place of, or in addition to, the owners of the vessel. That is not the case, however, and so such a result is mere speculation. None of the bare boat charter agreements in this case expressly mention that the fishing history or LLP license qualification of the F/V INFIDEL was transferred to Mr. Shadle. Therefore, the Decision did not mistakenly conclude that Mr. Shadle does not qualify for an LLP groundfish license based on the express terms of a written contract that clearly and unambiguously transferred the fishing history of the F/V INFIDEL to him.

Mr. Shadle has not alleged material facts or law that were overlooked or misunderstood by the Appeals Officer in this case. Mr. Shadle's motion for reconsideration is therefore DENIED.

The Decision in this appeal takes effect on September 13, 2004, unless by that date the Regional Administrator orders review of the Decision.

Randall J. Moen
Appeals Officer